

1801. *March 7.*

JOHNSTON and COMPANY, and Others, Creditors of Tweedie, *against* WILLIAM ATTWELL.

No. 5.

An obligation in security granted by several persons, for payment of the sums due to the creditors of a common debtor, may be executed upon a single stamp, whatever be the number of the creditors.

THE creditors of James Tweedie, who were six in number, having agreed to supersede diligence against him, on condition of his finding security to pay their debts by instalments, William Attwell and two other persons accordingly granted a bond, obliging themselves conjunctly and severally to pay the sums due to the respective creditors, amounting in all to £646 Sterling.

The bond was written upon a sheet of paper, with a stamp, costing £1. 9s.

William Attwell having presented a bill of suspension against payment of the bond, upon other grounds, a doubt was started, How far it was competent, by the stamp laws, to execute a bond in which six creditors were interested, upon a single stamp, corresponding to the aggregate sum in the bond; or whether a separate stamp was not necessary for the interest of each creditor?

The Lord Ordinary, proceeding on a report from the stamp-office, (which was not printed,) superseded advising the bill 'until the chargers shall have procured the bond charged on to be duly stamped, if they shall be advised so to do.'

A petition having been presented against this interlocutor, the Court were of opinion that the bond in question was duly stamped. There was here (it was observed) no junction of matters naturally disconnected with each other for the purpose of evading the stamp-duties, which is what the law (12th Anne, Sess. 2. C. 9. § 21. and 24.) had in view to prevent, but a cautionary obligation for the debts of one person, which fell naturally to be executed in one deed. It is like a bond for payment of a composition, which requires only one stamp, whatever be the number of creditors.

The Lords remitted to the Lord Ordinary, to refuse the bill.

Lord Ordinary, *Dunsinnan.*

For the Petitioner, *George Douglas.*

D. D.

Fac. Coll. No. 227. p. 517.

No. 6.

Codicil to a will not effectual, tho' subscribed by the testator, if not holograph or attested by witnesses.

1807. *May 13.*

DUNDAS *against* LOWIS.

IN 1804, Mrs. Margaret Houston executed a settlement, by which she disposed her whole property to certain persons as trustees. These trustees were directed to pay the interest of her fortune to her brother Captain Robert Rollo, during his life; to pay certain legacies, and in particular a legacy of £500 to Janet Houston Dundas, her grand-niece, and to pay over the re-

remainder of her fortune to her two nieces Agnes and Magdalene Lewis. In this deed, it was declared, 'That my said trustees shall hold any additional directions which I may give them, by a writing under my hand, as part of this trust-deed;' and, subjoined to the trust-deed, is a codicil in these words: 'In addition to the legacies above mentioned, I hereby direct my said trustees to pay to the before-designed Robert Forrester the sum of £50 Ster. at the term when my other legacies are paid; and I appoint this codicil to be recorded amongst with my settlement.

(Signed)

"MARGARET HOUSTON."

This codicil was written by the same person who wrote the trust-deed, was signed the day after the date of it, on the 20th June 1804, but was not tested by witnesses.

In 1805, Mrs. Houston executed another codicil, on a separate paper, of the following tenor: 'I Mrs. Margaret Houston of Morningside, did, in the last summer, make a settlement, appointing my two nieces Misses Agnes and Magdalene Lewis my residuary legatees. I now therefore revoke and alter it, in so far as to appoint my niece Miss Agnes Lewis my sole and only residuary legatee. In witness whereof, these presents, written by Robert Forrester, Treasurer of the Bank of Scotland, are subscribed by me, at Morningside, the 13th day of June 1805 years, before these witnesses, John Ponton, my servant, and the said Robert Forrester. I also desire, that my watch, jewels, trinkets, and laces, be given to my said niece Miss Agnes Lewis. (Signed) MARGARET HOUSTON. Robert Forrester, witness; John Ponton, witness.'

Subjoined to this paper are these words: 'I desire my Royal Bank stock to be given to Miss Jane Houston Dundas. (Signed) MARGARET HOUSTON.' These last words are also in the handwriting of Mr. Forrester, and they were subscribed by Mrs. Houston of the same date, after the servant who had witnessed the subscription of the codicil had left the room, and in order to supply an omission which Mrs. Houston conceived she had made in the codicil.

After Mrs. Houston's death, the trustees were doubtful how far they were bound to pay the legacy of £50 to Mr. Forrester, or to transfer the bank stock to Miss Dundas, inasmuch as these bequests were neither holograph of the testator, nor attested by witnesses.

A process of multiplepointing was brought in the name of the trustees, by the residuary legatee; and the Lord Ordinary 'having heard (21st Nov. 1806) the procurators for Miss Agnes Lewis, residuary legatee, and Miss Janet Houston Dundas, repels the claims of Miss Dundas and Mr. Robert Forrester, founded on the unauthenticated codicils; prefers Miss Lewis to the funds *in medio*, and decerns in the preference, and for payment accordingly.'

No. 6.

Afterward, upon advising a representation, with answers, his Lordship (16th Jan. 1807) pronounced the following interlocutor: ' Finds, That by a trust-deed, duly executed with all the solemnities of law, the late Mrs. Houston vested her whole property in trustees, for certain uses therein declared: Finds, That this deed reserved the power of alteration, and provided, that the trustees should hold any additional directions she might give them as to the disposal of her property, by a writing under her hand, as a part of the trust-deed: Finds, That upon the 13th June 1805, Mrs. Houston so far altered her original settlement as to appoint her niece Miss Agnes Lewis her sole residuary legatee, and that this codicil was duly executed, but that the separate codicil upon which the representer founds is not holograph, and is destitute of date, writer's name, and subscription of witnesses, so cannot be set up as an alteration of the former regular settlement; refuses the desire of the representation, and adheres to the former interlocutor.'

Miss Dundas presented a petition, which was, by a great majority, refused, without answers, upon the grounds stated in the interlocutor of the Lord Ordinary.

Lord Ordinary, *Hermann*.
Clerk, *Walker*.

For Petitioner, *Cathop*.

Agent, *A. Duncan*, W. S.

J.

Fac. Coll. No. 278. p. 627.

1807. December 12.

PETER and CATHARINE SWANY, against BANK of SCOTLAND.

No. 7.

Proof by the testimony of the instrumentary witnesses to a deed, that they did not see the granter subscribe, nor hear him acknowledge his subscription, is competent to be allowed before answer.

PETER and CATHERINE SWANY, representatives of Patrick Swany merchant in Thurso, brought a reduction of a bond of caution, granted to the Bank of Scotland for Alexander Paterson, bank agent at Thurso, and subscribed by the said Patrick Swany. The averment on which the pursuers founded was, that neither of the two instrumentary witnesses in the bond saw Patrick Swany subscribe, or heard him acknowledge his subscription; and of this they craved a proof by the testimony of these witnesses. The Lord Ordinary allowed the proof before answers; and, on a reclaiming petition and answers, the Court 'adhered to this interlocutor.'

The case of Franks against Franks, 9th July 1793; No. 30. p. 16822. was considered by the Court as fixing the law, that such evidence was competent whether it might or might not be sufficient to establish the fact averred.

Lord Ordinary, *Robertson*.

Act. *F. Jeffrey*.

Alt. *Ad. Gillies*.

Agents. *Geo. Napier*, W. S. and *James Ferguson*, W. S.

Ferrier, Clerk.

M.

Fac. Coll. No. 18. p. 49.